

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 93/AIL/Lab./J/2011, dated 25th April 2011)

## NOTIFICATION

Whereas, the Award in I.D. No.14/2008, dated 17-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Ajantha Cycle Parts Industry, Puducherry and Thiru A. Arul over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**N. APPA RAO,**

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PONDICHERRY

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court.

*Friday, the 17th day of December 2010*

## I. D. No. 14/2008

A. Arul,  
No.19, 2nd Street, Pudupet,  
Koodapakkam, Pondicherry . . . Petitioner

Vs.

The Managing Partner,  
Ajantha Cycle Parts Industry,  
Thattanchavady, Pondicherry. . . Respondent

This industrial dispute coming on 13-12-2010 for final hearing before me in the presence of Thiru P. Sankaran, advocate for the petitioner and Thiru C. Jagadeesan, advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

## AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry vide G. O. Rt. No. 93/2008/AIL/Lab./J, dated 6-6-2008 for adjudicating the following :-

1. Whether the dispute raised by Thiru A. Arul against the management of M/s. Ajantha Cycle Parts Industries, Pondicherry over his non-employment is justified or not?
  2. To what relief he is entitled to?
  3. To compute the relief, if any, awarded in terms of money if it can be so computed?
2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as Jointing Man from October 1998 in the respondent company to the utmost satisfaction of the company. From 21-11-2005 he went on leave and when he reported for duty on 30-11-2005, the respondent company refused to give the employment. The respondent management, without conducting any domestic enquiry, have dismissed him from service, which is against the labour law. The petitioner was working for ten years in the respondent company and since the union was started, they took revenge against him. Hence, this industrial dispute is filed for reinstatement with continuity of service, back wages and other benefits.

3. In the counter statement, the respondent has stated as follows :-

The petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation. Hence on 21-11-2005 the respondent sent a letter to the petitioner, calling explanation for his unauthorised absence from 3-11-2005. The petitioner received the said letter, but failed to report for duty. On 15-11-2005 the respondent once again sent a letter to report for duty on or before 22-12-2005, but the said letter returned with an endorsement "Refused return to the sender". On 28-2-2006 the respondent further sent a letter advising him to join duty within ten days from the date of receipt of the said letter. The petitioner received the said letter, but failed to report for duty. Hence, the petitioner is not entitled for any relief under any circumstances for his unauthorised absence and voluntarily withdrew from his employment, even after repeated reminders sent to him. Hence, he prays for dismissal of the industrial dispute.

4. No oral evidence was adduced on either side and Ex.P1 to Ex.P8 were marked on the side of the petitioner and Ex.R1 to Ex.R6 were marked on the side of the respondent.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. *On the point:*

The contention of the petitioner is that he was working as Jointing Man from October 1998 in the respondent company to the utmost satisfaction of the company and from 21-11-2005 he went on leave and when he reported for duty on 30-11-2005, the respondent company refused to give the employment. He further submitted that the respondent management, without conducting any domestic enquiry, have dismissed him from service, which is against the labour law and the petitioner was working for ten years in the respondent company and since the union was started, they took revenge against him.

7. *Per contra*, the contention of the respondent is that the petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation and hence on 21-11-2005 they sent a letter to the petitioner, calling explanation for his unauthorised absence from 3-11-2005. It is further stated by the respondent that the petitioner received the said letter, but failed to report for duty and on 15-11-2005 they once again sent a letter to report for duty on or before 22-12-2005, but the said letter returned with an endorsement "Refused return to the sender" and on 28-2-2006 they further sent a letter advising him to join duty within ten days from the date of receipt of the said letter and the petitioner received the said letter, but failed to report for duty and hence, the petitioner is not entitled for any relief under any circumstances for his unauthorised absence.

8. It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he went on leave from 21-11-2005 and when he reported for duty on 30-11-2005, he was not permitted to work by the respondent company. On the other hand, the respondent would submit that the petitioner was absent for duty from 3-10-2005 without applying any leave or prior intimation.

9. On perusal of records, it is seen that the petitioner has not produced any documentary evidence to show that he went on leave after getting prior permission from the respondent management. The petitioner is an employee under the respondent company and it is for

him to get prior sanction from his employer and then to proceed on leave that too when he proceeded on long leave. In this case, the respondent has not sanctioned any leave to the petitioner.

10. According to the respondent, since the petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation, on 21-11-2005 they sent a letter advising him to join duty on or before 30-11-2005 and he received the said notice but he continued to be absent. In order to prove his contention, the respondent has marked the letter Ex. R1 dated 21-11-2005 wherein the respondent has informed the petitioner that he has to join duty on or before 30-11-2005 otherwise his name will be deleted from the company records. The petitioner received the said letter under acknowledgment card Ex.R2. Ex.R3 is another letter dated 15-12-2005 sent to the petitioner by the respondent wherein they informed that since the petitioner has not joined duty, he has to give explanation for the same and also he has to join duty on or before 22-12-2005. Ex. R3 has been returned with an endorsement "Refused return to sender" which has been marked as Ex.R4. Ex.R5 is another letter dated 28-2-2006 sent by the respondent to the petitioner dismissing him from service and the said letter has been received by the petitioner under acknowledgment card Ex. R6. From the documents filed on the side of the respondent, it is seen that in spite of several opportunities given by the respondent, the petitioner has not joined duty and he has also not given any explanation for his continuous absent and hence this court comes to the conclusion that the petitioner has unauthorisedly absent and he went on leave without obtaining prior permission from the respondent management. Though on the side of the petitioner, Ex.P1 to Ex.P8 were marked, the said documents are not in any way helpful to his case.

11. The contention of the petitioner is that without giving opportunity to him and without conducting any domestic enquiry, he was dismissed from service by the respondent, which is against labour legislations.

12. On perusal of records, it is seen that the respondent has not conducted any domestic enquiry for the alleged misconduct of the petitioner. In this case, since the petitioner was absent from 3-10-2005, the respondent sent a letter Ex. R1 informing the petitioner to join duty on or before 30-11-2005 and since the petitioner has not joined duty, another two letters have been sent to him to give explanation for his unauthorised absence and since there is no response from the petitioner, he was dismissed from service *vide* letter, dated 28-2-2006 Ex.R5.

13. The respondent being an employer, has to safeguard the interest of their employees. When the petitioner is continuously absent without getting any prior sanction, he has to conduct the domestic enquiry and in the enquiry, opportunity has to be given to the petitioner to peruse the records and cross-examine the management witnesses and after complying all the formalities only, they have to take action against him. In this case, the respondent has not conducted any domestic enquiry and has violated the principles of natural justice. When the petitioner is not of a habitual absentee, the punishment imposed by the respondent management is disproportionate. In this regard, it is pertinent to refer the decision, which is relevant to this case:-

**2009 (III) LLJ 373 (SC) Jagdish Singh Vs. Punjab Engineering College and Others:-**

“When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline, the major punishment of dismissal can be interfered”

In this case, the respondent has not raised any serious misconduct prior to the present absenteeism. Hence, the misconduct that is alleged would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Hence, this court comes to a conclusion that the non-employment of the petitioner from service is not justified. But at the same time the available records would clearly prove that the petitioner was proceeding on leave without getting prior permission from the respondent. Therefore, considering the facts and circumstances of the case, the petitioner is entitled for reinstatement in service with continuity of service but not entitled for back wages. Accordingly, this point is answered.

14. In the result, the industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service. However, he is not entitled for back wages and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of December 2010.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Pondicherry.

*List of witnesses examined for the petitioner: Nil*

*List of witnesses examined for the respondent : Nil*

*List of exhibits marked for the petitioner:*

- Ex.P1 — Letter, dated 12-11-2005 sent to the respondent.
- Ex.P2 — Letter, dated 21-11-2005 sent to the petitioner by the respondent.
- Ex.P3 — Letter, dated 7-1-2006 sent by the petitioner to the respondent.
- Ex.P4 — Copy of the letter, dated 23-2-2006 sent by the petitioner to the respondent.
- Ex.P5 — Letter, dated 28-2-2006 sent by the respondent to the petitioner.
- Ex.P6 — Copy of the letter, dated 24-5-2006 sent by the petitioner to the Conciliation Officer.
- Ex.P7 — Copy of the letter, dated 24-6-2007 sent to Secretary to Government (Labour).
- Ex.P8 — Copy of the notification dated 6-6-2008.

*List of exhibits marked for the respondent:*

- Ex.R1 — Copy of the letter, dated 21-11-2005 sent to the petitioner.
- Ex.R2 — Acknowledgment card
- Ex.R3 — Copy of the letter, dated 15-12-2005 sent to the petitioner.
- Ex.R4 — Returned postal cover
- Ex.R5 — Copy of the letter, dated 28-2-2006 sent to the petitioner.
- Ex.R6 — Acknowledgment card.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Pondicherry.

GOVERNMENT OF PUDUCHERRY

**LABOUR DEPARTMENT**

*(G.O. Rt. No. 94/AIL/Lab./J/2011, dated 25th April 2011)*

**NOTIFICATION**

Whereas, the Award in I.D. No.8/2008, dated 17-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Ajantha Cycle Parts Industry, Puducherry and Thiru Kulanthaiperumal over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**N. APPA RAO,**

Under Secretary to Government (Labour).

# **BEFORE THE LABOUR COURT AT PONDICHERRY**

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court.

*Friday, the 17th day of December 2010*

**I. D. No. 8/2008**

Kulanthaiperumal,  
552, Pudhu Nagar,  
Thirukkanur, Pondicherry . . . Petitioner

*Versus*

The Managing Partner,  
Ajantha Cycle Parts Industry,  
Thattanchavady, Pondicherry. . . Respondent

This industrial dispute coming on 13-12-2010 for final hearing before me in the presence of Thiru P. Sankaran, advocate for the petitioner and Thiru C. Jagadeesan, advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

## **AWARD**

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.62/2008//AIL/Lab./J, dated 25-3-2008 for adjudicating the following :—

1. Whether the dispute raised by Thiru Kulanthaiperumal against the management of M/s. Ajantha Cycle Parts Industries, Pondicherry over his non-employment is justified or not?
2. To what relief, he is entitled to?
3. To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows :

The petitioner was working as Washingman from 1995 in the respondent company to the utmost satisfaction of the company. From 6-10-2005 he went on leave and when he reported for duty on 31-10-2005, the respondent company refused to give the employment. On 16-11-2005 the respondent management informed the petitioner through a letter that his name was deleted from the company records and by way of letter, dated 1-12-2005, the petitioner was dismissed from service with effect from 19-11-2005. The respondent management, without conducting any domestic enquiry, have dismissed him from service, which is against the labour law. The petitioner was working for eight years in the respondent company and since the union was started, they took revenge against him. Hence, this industrial dispute is filed for reinstatement with continuity of service, back wages and other benefits.

3. In the counter statement, the respondent has stated as follows :—

The petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation. Hence on 25-10-2005 the respondent sent a letter advising the petitioner to join duty on or before 31-10-2005. The petitioner received the said notice and joined duty on 31-10-2005 only and continued to be absent from 1-11-2005. Again on 16-11-2005 the respondent sent a letter informing him that he himself terminated his service voluntarily and advising him to receive the emoluments due to him till 19-11-2005. On 1-12-2005 the respondent sent another letter to remind him to receive the emoluments due to him in the office of the factory unit during the working hours. The petitioner received the said letter and gave evasive reply and failed to join duty. Hence, on 17-1-2006 the respondent sent a letter to the petitioner informing him to receive the arrears of salary and other benefits, but the petitioner did not comply with. Hence, he prays for dismissal of the industrial dispute.

4. No oral evidence was adduced on either side and Ex.P1 to Ex.P7 were marked on the side of the petitioner and Ex.R1 to Ex.R10 were marked on the side of the respondent.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. *On the point:*

The contention of the petitioner is that he was working as Washingman from 1995 in the respondent company to the utmost satisfaction of the company and from 6-10-2005 he went on leave and when he reported for duty on 31-10-2005, the respondent company refused to give the employment. The petitioner further submitted that on 16-11-2005 the respondent management informed him through a letter that his name was deleted from the company records and by way of letter, dated 1-12-2005, he was dismissed from service with effect from 19-11-2005 and the respondent management, without conducting any domestic enquiry, have dismissed him from service, which is against the labour law.

7. *Per contra*, the contention of the respondent is that the petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation and hence on 25-10-2005 they sent a letter advising the petitioner to join duty on or before 31-10-2005 and the petitioner received the said notice and joined duty on 31-10-2005 only and continued to be absent from 1-11-2005 and again on 16-11-2005 they sent a letter informing him that he himself terminated his service voluntarily and advising him to receive the emoluments due to him till 19-11-2005.

8. It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he went on leave from 6-10-2005 and when he reported for duty on 31-10-2005, he was refused to work by the respondent company. On the other hand, the respondent would submit that the petitioner was absent from duty from 3-10-2005 without applying any leave or prior intimation.

9. On perusal of records, it is seen that the petitioner has not produced any documentary evidence to show that he went on leave after getting prior permission from the respondent management. The petitioner is an employee under the respondent company and it is for him to get prior sanction from his employer and then to proceed on leave that too when he proceeded on long leave. In this case, the respondent has not sanctioned any leave to the petitioner.

10. According to the respondent, since the petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation on 25-10-2005 they sent a letter advising him to join duty on or before 31-10-2005 and he received the said notice and joined duty on 31-10-2005 only and continued to be absent from 1-11-2005. In order to prove his contention, the respondent has marked the letter Ex.R1, dated 25-10-2005 wherein the respondent has informed

the petitioner that he has to join duty on or before 31-10-2005 otherwise his name will be deleted from the company records. Ex.R3 is the another letter, dated 16-11-2005 sent to the petitioner by the respondent wherein they informed that since the petitioner has not joined duty, his name has been deleted from the company records and informed him to receive the balance arrears of amount. Both Ex.R1 and Ex.R3 letters have been received by the petitioner under acknowledgment cards Ex.R2 and Ex.R4. From the documents filed on the side of the respondent, it is seen that the petitioner has unauthorisedly absent and he went on leave without obtaining prior permission from the respondent management. Though on the side of the petitioner, Ex.P1 to Ex.P7 were marked, the said documents are not in any way helpful to his case.

11. The contention of the petitioner is that without giving opportunity to him and without conducting any domestic enquiry, he was dismissed from service by the respondent, which is against labour legislations.

12. On perusal of records, it is seen that the respondent has not conducted any domestic enquiry for the misconduct of the petitioner. In this case, since the petitioner was absent from 3-10-2005, the respondent sent a letter Ex.R1 informing the petitioner to join duty on or before 31-10-2005 and since the petitioner has joined duty only on 31-10-2005 and subsequently he was absent, the respondent sent another letter Ex.R3, dated 16-11-2005 informing the petitioner that his name has been deleted from the company records.

13. The respondent being an employer, has to safeguard the interest of their employees. When the petitioner is continuously absent without getting any prior sanction, he has to conduct the domestic enquiry and in the enquiry, opportunity has to be given to the petitioner to peruse the records and cross-examine the management witnesses and after complying all the formalities only, they have to take action against him. In this case, the respondent has not conducted any domestic enquiry and has violated the principles of natural justice. When the petitioner requested the respondent for his employment through a letter Ex.R7, dated 9-1-2006, his request was refused by the respondent *vide* his letter, dated 17-1-2006. When the petitioner is not of a habitual absentee, the punishment imposed by the respondent management is disproportionate. In this regard, it is pertinent to refer the decision, which is relevant to this case:-

**2009 (III) LLJ 373 (SC) Jagdish Singh Vs. Punjab Engineering College and Others:—**

“When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be

interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline, the major punishment of dismissal can be interfered”.

In this case, the respondent has not raised any serious misconduct prior to the present absenteeism. Hence, the misconduct that is alleged would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Hence, this court comes to a conclusion that the non-employment of the petitioner from service is not justified. But at the same time the available records would clearly prove that the petitioner was proceeding on leave without getting prior permission from the respondent. Therefore, considering the facts and circumstances of the case, the petitioner is entitled for reinstatement in service with continuity of service but he is not entitled for back wages. Accordingly, this point is answered.

14. In the result, the industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service. However, he is not entitled for back wages and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of December 2010.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court.  
Pondicherry.

*List of witnesses examined for the petitioner : Nil*

*List of witnesses examined for the respondent : Nil*

*List of exhibits marked for the petitioner:*

- Ex.P1 — Letter, dated 16-11-2005 sent to the petitioner.
- Ex.P2 — Letter, dated 1-12-2005 sent to the petitioner.
- Ex.P3 — Copy of the letter, dated 29-12-2005 sent by the petitioner to respondent.
- Ex.P4 — Copy of the letter, dated 17-1-2006 sent to the petitioner.
- Ex.P5 — Copy of the letter, dated 23-2-2006 sent by the petitioner to respondent.

Ex.P6 — Copy of the letter, dated 24-5-2006 sent by the petitioner to Conciliation Officer.

Ex.P7 — Copy of the letter, dated 25-9-2007 sent to the respondent.

*List of exhibits marked for the respondent :*

Ex.R1 — Copy of the letter, dated 25-10-2005 sent to the petitioner.

Ex.R2 — Acknowledgment card.

Ex.R3 — Letter, dated 16-11-2005 sent to the petitioner.

Ex.R4 — Acknowledgment card.

Ex.R5 — Copy of the letter, dated 1-12-2005 sent to the petitioner.

Ex.R6 — Acknowledgment card.

Ex.R7 — Letter, dated 9-1-2006 sent by the petitioner to the respondent.

Ex.R8 — Copy of the letter sent to the petitioner, dated 17-1-2006.

Ex.R9 — Acknowledgment card.

Ex.R10 — Copy of the letter, dated 23-2-2006 sent by the petitioner to the respondent.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court.  
Pondicherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

*(G.O. Rt. No. 95/AIL/Lab./J/2011, dated 25th April 2011)*

**NOTIFICATION**

Whereas, the Award in I. D. No. 35/2007, dated 21-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Unicorn (Bangalore) Private Limited, Puducherry and Thiru J. Rajganesha over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order )

**N. APPA RAO,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PONDICHERRY**

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court.

*Tuesday, the 21st day of December 2010*

**I. D. No. 35/2007**

J. Rajganesh.  
21, Puducherry Theru,  
Sanarapet, Muthirapalayam,  
Pondicherry . . . Petitioner

*Versus*

The Managing Partner,  
Unicorn (Bangalore) Private Limited,  
Mettupalayam, Pondicherry. . . Respondent

This industrial dispute coming on 20-12-2010 for final hearing before me in the presence of Thiru R.S. Zivanandam, advocate for the petitioner and Thiruvallargal K.V. Shanmuganathan and L. Vivekananthan and Mrs. V. Vijayanthimala, advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

**AWARD**

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G. O. Rt. No.152/2007/Lab./AIL/J, dated 12-11-2007 for adjudicating the following :-

1. Whether the non-employment of Thiru J. Rajganesh by the management of M/s. Unicorn (Bangalore) Private Limited, Pondicherry is justified or not?
2. To what relief he is entitled to?
3. To compute the relief, if any, awarded in terms of money if it can be so computed?
2. The petitioner, in his claim statement, has averred as follows:

The petitioner was an employee as Machine Operator from 27-5-1999. The workers formed a trade union. Therefore the management did not allow the entire work force to work exactly 60 members from February 2004 and hence the union raised industrial disputes with the management and also before the Labour Officer (Conciliation). Before the Labour Officer (Conciliation), the management did not heed the request of the petitioner. Therefore, an industrial dispute has been referred to the court. In the reference, the name of the petitioner has been left

out and hence he raised a separate dispute on 1-6-2006 and on 27-11-2006. wherein which the management alleged that the petitioner has done a serious misconduct of habitual absence without leave. The reply made by the management dated 13-2-2006 admitting the petitioner's capacity and denying the culpabilities of the management in not allowing the workers to work after starting the trade union. Therefore, the management wants to remove the petitioner from the rolls of the company. Since the petitioner has involved in the union activities, he was dismissed from service without conducting any domestic enquiry and therefore it has violated the principal of natural justice. Hence, this industrial dispute is filed.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was appointed as trainee in the respondent company on 27-5-1999 and during the year 2001, the management of the respondent company was taken over by the present management. The petitioner was on probation when the present management took over the respondent company. While the petitioner was on probation, he did not evince any interest in his work. He had abstained from work with effect from 7-2-2004. He did not apply for leave. The petitioner was only a probationer and he had no lien on any post. The petitioner did not make any representation to the respondent seeking for reinstatement immediate after the so called termination on 9-2-2004. The petitioner has raised the present dispute only to make wrongful gain from the management. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW1 was examined and Ex.P1 to Ex.P4 were marked. On the side of the respondent. RW1 was examined and Ex.R1 and Ex.R2 were marked.

*5. The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

*6. On the point :*

It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he was an Executive Committee member in the Union of the Industrial Estate Workers functioning in the respondent company and since he was involved in the Union activities, he along with some other workers were denied employment and subsequently he was dismissed from service without holding any domestic enquiry. In order to prove the same, the petitioner was examined as PW1 and PW1 in his evidence has deposed the said version and Ex.P1 to Ex.P4 were marked.

7. *Per contra*, the contention of the respondent is that he was on probation when the present management took over the respondent company and he had abstained from work with effect from 7-2-2004 and he did not apply for leave. In order to prove the same, the Manager of the respondent company was examined as RW1, who has stated the said facts and Ex.R1 and Ex.R2 were marked.

8. Heard both sides. Perused the case records. The main contention of the petitioner is that he joined as trainee in the respondent company and the action was being taken by the management to place him as probationer after take over by Acc Technology Group, bonus was paid at 8.33 % by the new management and also stopped other privileges and placing on probation and he was not allowed inside the factory by the security on 9-2-2004 without charges and not called for any explanation from him. *Per contra*, the contention of the respondent is that the petitioner was employed as trainee/probationer till January 2004 and after 7-2-2004 he did not turn up for work continuously and absented himself without any prior intimation or leave and the management informed that in the interest of administration, it had made alternate arrangements and treated the petitioner abandoned his job on his own and treated his case as "left". But the respondent has not produced any document to show that the petitioner had abstained from work on his own or continuously absented for a long time without any intimation. If the contention of the respondent is true, they would have issued memo to the petitioner and taken action against him. But no such memo has been filed by the respondent to prove the said contention. RW1 in his evidence has also admitted that he did not send any show cause notice for the unauthorised absent of the petitioner. The relevant portion of his evidence runs as follows:-

“மனுதாரர் பணிக்கு தொடர்ந்து வராததினால் மீண்டும் அறிவிப்பு கடிதம் கொடுத்தோமா என்றால் கொடுக்கவில்லை”

Hence, the respondent has failed to prove that the petitioner was absent unauthorisedly.

9. The learned counsel for the petitioner would submit that the order of dismissal was given without holding any domestic enquiry or issuing show cause notice which is against the natural justice.

10. On perusal of records, it is seen that the respondent has not conducted any domestic enquiry for the misconducts of the petitioner, as alleged by the respondent and it is evident that on oral instruction given by the respondent, the petitioner was dismissed from service.

11. The respondent being an employer, has to safeguard the interest of their employees. When the petitioner was continuously absent without getting any prior sanction or sleeping while he was on duty, the respondent has to conduct the domestic enquiry and in the enquiry, opportunity has to be given to the petitioner to peruse the records and cross-examine the management witnesses and after complying all the formalities only, they have to take action against him. In this case, no domestic enquiry was conducted by the respondent and they dismissed the service of the petitioner on verbal instruction. When the petitioner was working in the respondent company for more than five years without any interruption, it was necessary to have given opportunity to the petitioner before terminating him from service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Therefore, the termination of service of the petitioner was bad in law. When the petitioner is not of a habitual absentee, the punishment imposed by the respondent management is disproportionate. In this regard, it is pertinent to refer the decision, which is relevant to this case:-

### 2009(III) LLJ 373 (SC)

“When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline, the major punishment of dismissal can be interfered”

In this case, the respondent has not raised any serious misconduct against the petitioner prior to misconduct of unauthorised absent from 7-2-2004. Hence, the misconduct that is alleged would definitely amount to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Hence, this court comes to a conclusion that the non-employment of the petitioner from service is not justified. Hence, he has to be reinstated into service. But considering the facts and circumstances of the case, the petitioner is not entitled for continuity of service and back wages. Accordingly, this point is answered.



12. In the result, the industrial dispute is partly allowed and the respondent management is hereby directed to reinstate the petitioner into service. However, he is not entitled for continuity of service and back wages. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of December 2010.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Pondicherry.

*List of witnesses examined for the petitioner:*

PW1 — 25-3-2010 - Rajganesh

*List of witnesses examined for the respondent :*

RW1 — 23-9-2010 - P. Gnanagurupatham

*List of exhibits marked for the petitioner:*

Ex.P1 — Copy of the letter, dated 27-11-2006 sent by the petitioner to the Conciliation Officer.

Ex.P2 — Letter, dated 13-9-2006 sent by the respondent to Conciliation Officer.

Ex.P3 — Copy of the failure report, dated 8-8-2007

Ex.P4 — Copy of the notification, dated 12-11-2007

*List of exhibits marked for the respondent:*

Ex.R1 — Copy of the letter, dated 27-11-2006 sent by the petitioner to the Conciliation Officer.

Ex.R2 — Copy of the letter, dated 1-6-2006 sent by the petitioner to the Conciliation Officer.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Pondicherry.

GOVERNMENT OF PUDUCHERRY

**OFFICE OF THE CHIEF EDUCATIONAL OFFICER**

*No. 3818/CEO/KKL/E3(Exam.)/2010/1595.*

*Karaikal, the 18th April 2011.*

NOTIFICATION

It is hereby notified that the original H.S.C. Mark Certificate, under Register Number 696761, bearing Serial No. AB 2508569 of March 1998 session in respect of Parimala, R., an ex-pupil of Annai Theresa Government Girls' Higher Secondary School, Karaikal, is reported to have been lost beyond scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Secretary, State Board of Secondary Examinations, College Road, Chennai-6, for cancellation, as it is no longer valid.

**G. SUBRAMANIAN,**  
Chief Educational Officer.

GOVERNMENT OF PUDUCHERRY

**DEPARTMENT OF PERSONNEL AND  
ADMINISTRATIVE REFORMS (PERSONNEL WING)**

*(G.O.Ms. No. 18/DPAR-SSII(1), dated 26th April 2011)*

NOTIFICATION

On attaining the age of superannuation, the following Superintendents shall retire from service with effect from the afternoon of 30-4-2011.

1. Thiru R. Parthasarathy, Superintendent,  
Directorate of Accounts and Treasuries,  
Puducherry.
2. Thiru S. Balaguru, Superintendent,  
Directorate of School Education, Puducherry.

[By order of the Special Secretary (Personnel)]

**GIDDI MRUTHYUNJAYA DURGA RAO,**  
Under Secretary to Government (DP&AR).

GOVERNMENT OF PUDUCHERRY

**DIRECTORATE OF SCHOOL EDUCATION**

*No. C/236-244/EC/DSE/2011.*

*Puducherry, the 27th April 2011.*

NOTIFICATION

It is hereby informed that the original computer Mark Certificates of Higher Secondary Examination of the following candidates have been reported to be lost beyond the scope of recovery and necessary steps have been taken to issue duplicate certificates to the candidates. If any one finds the original Mark Certificates, they may be sent to the Secretary, State Board of Secondary Examinations, College Road, Chennai – 600 006, for cancellation as they are no longer valid.